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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUAN FLORES-MENDEZ, an individual and
TRACY GREENAMYER, an individual, and
on behalf of classes of similarly situated
individuals,

Plaintiffs,

v.

ZOOSK, INC., a Delaware corporation,

Defendant.

Case No. 3:20-cv-4929-WHA

**DECLARATION OF REBECCA
HARLOW IN SUPPORT OF
PLAINTIFFS' MOTION TO SEAL
PURSUANT TO LOCAL RULE 79-5(F)**

JUDGE: The Honorable William Alsup

1 I, Rebecca Harlow, hereby declare as follows:

2 1. I am an associate at the law firm Orrick, Herrington & Sutcliffe, LLP, counsel of
3 record for Defendant, Zoosk, Inc. (“Zoosk”) in the above-captioned litigation.

4 2. I submit this Civil Local Rule 79-5(c)(1) Declaration pursuant to Civil Local Rule
5 79-5(f)(3) in support of Plaintiffs’ Motion to Consider Whether Another Party’s Material Should
6 be Sealed Pursuant to Local Rule 79-5(F) (ECF No. 227). I have knowledge of the facts set forth
7 herein, and if called upon as a witness, I could testify to them competently under oath.

8 * * *

9 3. On July 13, 2022, Plaintiffs filed a Motion to Consider Whether Another Party’s
10 Material Should be Sealed Pursuant to Local Rule 79-5(F). ECF 227.

11 4. I have reviewed the parties’ Stipulated Protective Order (ECF 69) and the Court’s
12 Protective Order (ECF 71) which approved of the parties’ Stipulated Protective Order, subject to
13 various conditions.

14 5. Plaintiffs’ Reply in Support of Plaintiffs’ Motion to Strike Untimely Disclosed
15 Evidence and Witnesses refers to, incorporates, and attaches as exhibits material designated
16 “Confidential” by Zoosk pursuant to the Protective Order (the “Designated Material”).

17 6. The Designated Material sets forth detailed confidential information concerning,
18 *inter alia*, (i) the structure of Zoosk’s network and the virtual location of its proprietary property
19 including its source code; (ii) the security posture of Zoosk’s network infrastructure; (iii) Zoosk’s
20 data security and incident response practices; (iv) methods purportedly used by unauthorized third-
21 parties to purportedly access Zoosk’s network; (v) actions taken by Zoosk to prevent and protect
22 against unauthorized intrusion into its network; (vi) Zoosk’s detailed financial reports; and (vii) the
23 details of the PII of Zoosk’s users. Indeed, the Designated Material includes descriptions of Zoosk
24 users’ PII, a declaration by the Head of Legal for Spark Networks Services GmbH detailing Zoosk’s
25 data security practices, a report by one of Zoosk’s experts based on and discussing confidential
26 information relating to Zoosk’s finances, and a transcript of a Zoosk employee’s deposition about
27

1 Zoosk’s data security practices.¹ Each of the documents other than Plaintiffs’ reply brief has
 2 previously been filed provisionally under seal and has previously been the subject of a motion
 3 regarding sealing. *See* ECF Nos. 200-3, 201, 204, 206, 206-5, 206-9, 207. Zoosk filed a public
 4 redacted version of the von Trotha Declaration at ECF No. 206-09 on June 10, 2022.

5 7. California law requires a party seeking to seal records in or attached to a non-
 6 dispositive motion to demonstrate good cause exists to seal such records. “A ‘good cause’ showing
 7 under [Federal Rule of Civil Procedure] 26(c) will suffice to keep sealed records attached to non-
 8 dispositive motions. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006).
 9 Rule 26(c) states that if “good cause” is shown in discovery, a district court may issue “any order
 10 which justice requires to protect a party or person from annoyance, embarrassment, oppression, or
 11 undue burden or expense.” Fed. R. Civ. P. 26(c). “For good cause to exist, the party seeking
 12 protection bears the burden of showing specific prejudice or harm will result if no protective order
 13 is granted.” *Phillips ex rel. Ests. of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir.
 14 2002). “The law . . . gives district courts broad latitude to grant protective orders to prevent
 15 disclosure of materials for many types of information, including, *but not limited to*, trade secrets or
 16 other confidential research, development, or commercial information.” *Id.* (citing Fed. R. Civ. P.
 17 26(c)(7)). “When a court grants a protective order for information produced during discovery, it
 18 already has determined that ‘good cause’ exists to protect this information from being disclosed to
 19 the public by balancing the needs for discovery against the need for confidentiality.” *Id.* at 1213.
 20 “Therefore, when a party attaches a sealed discovery document to a nondispositive motion, the
 21 usual presumption of the public’s right of access is rebutted.” *Id.*


22 8. Good cause exists to seal the Designated Material. The Designated Material
 23 constitutes confidential proprietary information, including but not limited to confidential research,
 24 development, and commercial information. Failure to seal and disclosure of the Designated
 25 Material will expose Zoosk and the PII of Zoosk’s users to an exponentially increased risk of

26 ¹ Plaintiffs submit the deposition transcript in its entirety, rather than excerpting the specific
 27 portions relied upon. Given the extensive confidential contents of this transcript and its designation
 28 as Confidential in its entirety, sealing of the document is particularly appropriate.

1 unauthorized access and criminal hacking. Failure to seal and disclosure of the Designated Material
2 will also cause competitive harm to Zoosk.

3 9. For the foregoing reasons and pursuant to Civil Local Rule 79-5(f) and Federal Rule
4 of Civil Procedure 26, the Designated Material should be sealed and Plaintiffs' Motion should be
5 granted.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing
7 is true and correct, and that this declaration was executed in San Francisco, California on July 19,
8 2022.

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12 Rebecca C. Harlow
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